

EXHIBIT 12



Department of
Correction

Lethal Injection Update

August 31, 2017

To provide an overview of the offenders sentenced to death, the current law as it pertains to executions and the efforts made to procure the necessary chemicals to compound the State's Lethal Injection Compound (LIC).

Population

As of August 31, 2017

Offenders with sentences of death: 60

By sex and race:

59 males and 1 female

30 White, 27 African Americans, 1 Hispanic, 1 Asian

Where are they from?

36 offenders are from the largest metropolitan counties:
Shelby (25), Davidson (6), Knox (5), and Hamilton (3)

16 offenders were convicted in East Tennessee

11 offenders were convicted in Middle Tennessee

33 offenders were convicted in West Tennessee

Dates Scheduled

2017 Dates (0):

2018 Dates (2):

January 3, 2018

May 9, 2018

Both cases just completed direct appeal and have additional steps in the legal process.

The Law

- T.C.A. § 40-23-114 provides that any person who is sentenced to the punishment of death, that sentence will be carried out by lethal injection with some exceptions such as:
 - A person sentenced to death for an offense committed prior to January 1, 1999 may elect to be executed by electrocution by signing a waiver; OR
 - The TDOC Commissioner certifies to the governor that one or more of ingredients essential to carrying out a sentence of death by lethal injection is unavailable through no fault of TDOC.

The law

Tennessee law further provides that the alternative means of execution **shall** be electrocution if the chemicals for the LIC are unavailable and/or lethal injection is found to be an unconstitutional method of carrying out a sentence of death.

Method

Tennessee Protocol:

Pentobarbital (Barbiturate) – compounded into an injectable solution. For each execution, there are 2 syringes, each containing a 5 gram compounded solution of Pentobarbital.

Search for Source

Reached out to [REDACTED], as it was understood that they had a source for Pentobarbital. [REDACTED] was unwilling to either share the identity of their source, or provide our contact information to their source. [REDACTED] was also unwilling to offer any guidance as to how [REDACTED] was able to find its current source.

Search for Source

- [REDACTED] assigned with task of locating source of Pentobarbital
- First step was to search by contacting compounding pharmacies to determine if they: 1) Had an inventory of Pentobarbital; or 2) Had a source of Pentobarbital and were willing to compound the LIC for the department
- Several pharmacies declined to be involved in any way. Finally, a compounding pharmacy agreed to both compound the LIC and aid in the search for a source.
- Search involved cold calling U.S. based Active Pharmaceutical Ingredient (API) supply companies.

Search for Source

Collectively, contact was made with close to 100 potential sources, including the 3 major U.S. chemical wholesalers. None of these worked for one or more of the following reasons:

- Company did not have an inventory of Pentobarbital - apprx. 70%
- Company did not have sufficient quantities of the needed form of Pentobarbital and no source to obtain sufficient quantities - apprx. 10%
- Company unwilling to supply Pentobarbital if it was to be used in lethal injection - apprx. 20%

Search for Source

It appears there is no U.S. based source for Pentobarbital and so the search was broadened into the possibility of importing the chemical from overseas:

- C.F.R. § 1312.13 grants the DEA the authority to issue permits for the importation of schedule II narcotics (i.e. Pentobarbital) when it is necessary to provide for a legitimate need of the U.S. and the domestic supply is inadequate

- [REDACTED]

Search for Source

- [REDACTED]
- At the meeting, the agents informed [REDACTED] that [REDACTED] because, according to them, there is a supply of pentobarbital available in the United States.
- When told that the companies who do have a supply would not sell their supply for use in lethal injection, the [REDACTED] agents explained that it didn't matter and that it was an issue to take up with the companies themselves.

Search for Source

In the course of researching the possibility of importation, [REDACTED] became aware of a federal case in Texas wherein the FDA had seized a shipment of drugs/chemicals being imported by the Texas Department of Correction. Texas DOC filed suit in federal district court for the release of the shipment. To this date there has not been any resolution to this case.

[REDACTED] is now researching FDA regulations as a result of this case to determine what if any process can be undertaken to obtain FDA approval for the importation of Pentobarbital. Thus far the approval process appears to be very cumbersome unless an exception can be claimed to lessen the burden.

Activity in Other States

Other states have had similar difficulty/inability in locating a source for their LIC.

- Arkansas attempted to perform 7 executions in the span of 10 days because their current supply of LIC was set to expire and the State did not have a source for additional LIC chemicals. Arkansas has subsequently obtained a supply of midazolam.
- South Carolina has stated, in connection with the recent conviction of Dylan Roof, that they do not have a supply of LIC and have not been able to find a supply.
- Indiana DOC was reprimanded for not following proper procedure in unilaterally trying to change their protocol to a new LIC due their inability to locate a supply of the current drug.

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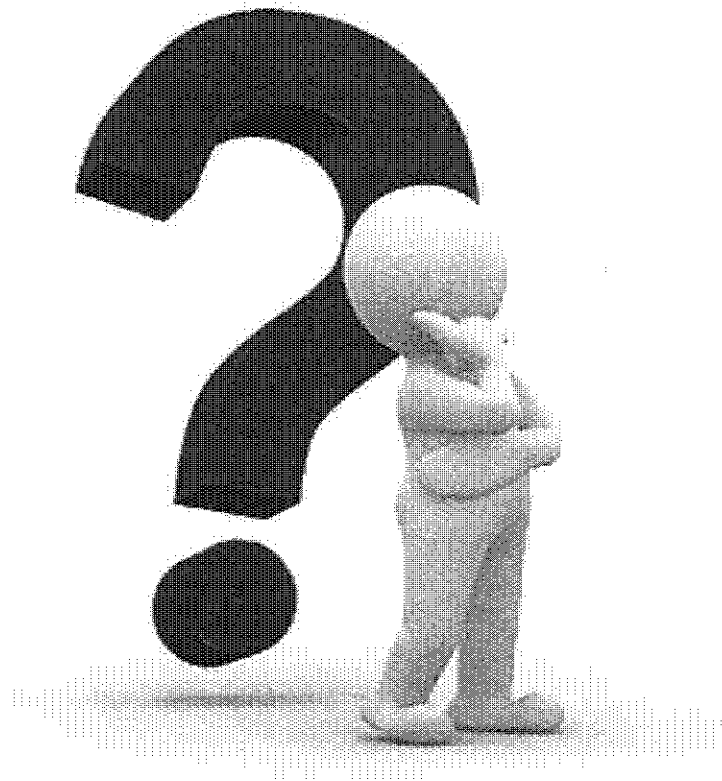
- Texas, in the case mentioned before, attempted to import a different LIC chemical than they currently use in executions. Presumably due to the potential unavailability of Pentobarbital even on an international level.
- Some states are using LIC chemicals that have come under harsh scrutiny, such as Alabama's used of Midazolam in the recent execution of Robert Melson.
- Florida is using a drug, etomidate, that has never been used in the United States for execution.

Additional Info

A few years ago approximately 13 states reached out to the Department of Justice seeking aid in locating a source for LIC chemicals and/or gaining access to any supply that the Federal Government currently had. This did not result in any action by DOJ.

There are circumstances where the Federal Government can step in and orchestrate the supply of chemicals in situations where supply is so low and the cost for the chemical is so high as to make it virtually unavailable where there is a significant need.

Discussion



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